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Supreme Court of the United States

October Term, 1960

No. 171

CITY OF MIAMI BEACH and
VILLAGE OF EL PORTAL,
Municipal Corporations of the State of Florida,
Petitioners,

vs.

COUNTY OF DADE, a political Subdivision of the State of Florida,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of Florida, and to the Circuit Court of the Eleventh Judicial Circuit in and for the State of Florida.

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Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of Florida, and to the Circuit Court of the Eleventh Judicial Circuit in and for the State of Florida.

Petitioners, the City of Miami Beach, and the Village of El Portal are municipal corporations of the State of Florida, created by Special Acts of the Legislature of the State of Florida. They pray that this Court issue its Writ of Certiorari to the Supreme Court of the State of Florida, or to the Circuit Court of the Eleventh Judicial Circuit, in and for the State of Florida, to review the Final Decree of the latter court entered on June 27, 1960; and to review the Order of the Florida Supreme Court entered on January 23, 1961, granting the motion of Dade County,

a political subdivision of the State of Florida, the respondent herein to quash the appeal of the Petitioners herein on the grounds that the appeal taken by your Petitioners was "frivolous and taken only for the purpose of delay" and that ". . . the questions raised on appeal, namely the constitutionality (of certain ordinances hereinafter quoted) are wholly without merit and have been determined adversely to appellants' (petitioners herein) contentions by the (Florida) Supreme Court in Miami Shores Village v. Cowart (Florida, 1958) 108 So. (2) 468. . . "

Petitioners also pray that this Court also review, by its Writ of Certiorari, the Order of the Florida Supreme Court filed on March 30, 1961 denying your Petitioners' Motion for Leave to Intervene in said cause on behalf of, and as representatives of, their respective inhabitants, citizens and taxpayers.

Petition for rehearing of the said Order Dismissing Appeal, filed by your Petitioners, was denied by the Florida Supreme Court on March 27, 1961.

OPINIONS BELOW

The Final Decree of the Circuit Court of the Eleventh Judicial Circuit of Florida is not reported officially. The decree is set forth in full in the Appendix hereto.

The Order of the Florida Supreme Court dismissing your Petitioners' Appeal was without opinion and is reported officially in 129 So. (2) 413. The Order denying Petitioners leave to intervene was also without opinion, and is not reported, officially or unofficially.

STATEMENT OF GROUNDS FOR JURISDICTION

The Order of the Florida Supreme Court dismissing Petitioners' Appeal was made and entered on January 23, 1961. The Florida Supreme Court made and entered its Order denying Petition for Rehearing on March 27, 1961. The same Court made and entered its Order denying Petitoiners' Motion for Leave to Intervene on March 30, 1961. The Florida Supreme Court entered its Order on April 4, 1961, staying proceedings in this cause until this Court passes upon this Petition, on condition that this Petition be filed "within . . . not exceeding (90) ninety days from the date of the order sought to be reviewed."

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3), because the petitioners, their citizens, residents, and taxpayers have been deprived of due process of law and denied the equal protection of the law under the Fourteenth Amendment to the United States Constitution by state action through the decision and judgment of the Florida Supreme Court, an agency of the State of Florida.

The decisions on which review is sought were rendered by the highest court of the State. All appellate remedies of the State Court have been exhausted.

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

The Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution.

Article VIII, Section 11 of the Constitution of the State of Florida (Appendix).

Article IX, Section 5 of the Constitution of the State of Florida (Appendix).

Section 14 of the Charter of the City of Miami Beach, being Chapter 7672 Laws of Florida, Acts of 1917, as amended by Chapter 16566, Laws of Florida, Acts of 1933 (Appendix).

Section 4, of Charter of Village of El Portal, being Chapter 19,799, Laws of Florida, 1939 (Appendix).

Preamble to Dade County Home Rule Charter (Appendix).

Ordinances #57-12 and #57-13 of County of Dade (Appendix).

STATEMENT OF THE CASE

Procedural History of the Case:

The County of Dade filed this suit in Chancery in the Circuit Court of the Eleventh Judicial Circuit of Florida against your Petitioners to:

1. Enjoin them from enforcing their own traffic ordinances,

2. Enjoin the Petitioners from trying offenders against traffic ordinances in their own municipal courts and to compel Petitioners' policemen to prosecute all

traffic offenders in a new 'Metropolitan Court" established by the County of Dade, and

3. To compel the Petitioners to abide by, and comply with, all the provisions of Ordinances #57-12, and #57-13, adopted by the County of Dade.

Your Petitioners filed their respective Answers to the Complaint denying all material allegations of the Complaint, and asserting the defense that said Ordinances violated Section 11, Article VIII, and Section 5, Article IX of the Florida Constitution.

At the final hearing, some evidence was heard, but the basic issue was one of law, namely, the constitutionality of the ordinances sought to be enforced by the County of Dade.

Thereafter, the trial Court entered its Final Decree (Appendix p. 26) upholding the constitutional validity of the ordinances involved, and granting all the relief prayed by the County.

Petitioners thereupon appealed to the Florida Supreme Court. Thereafter, the County of Dade filed its Motion to Quash the Appeal, pursuant to Rule 3.9(b) of the Florida Appellate Rules which provides:

> "b. Motion to Quash Appeal. Where appropriate, the appellee may file with the clerk of the court, a written motion to quash the appeal on the ground that the same is frivolous or taken only for the purpose of delay."

On January 23, 1961, the Florida Supreme Court entered its Order granting said Motion. (Appendix p. 46).

Simultaneously, with the filing of a Petition for Rehearing, Petitioners filed their Petition to Intervene in the cause on behalf of their respective residents, citizens, and taxpayers (Appendix, p. 52).

On March 27, 1961, the Florida Supreme Court denied said Petition for Rehearing. (Appendix, p. 51).

On March 30, 1961, the Florida Supreme Court denied Petitioners' Petition for Leave to Intervene on behalf of its citizens, residents, and taxpayers. (Appendix p. 52).

On April 4, 1961, the Florida Supreme Court granted Petitioners' Petition for Stay of Proceedings, so as to permit Petitioners to file this Petition in this Court.

QUESTIONS PRESENTED

Are the petitioners, the City of Miami Beach and the Village of El Portal, municipal corporations of the State of Florida, and their respective residents, citizens and taxpayers deprived of due process of law and denied the equal protection of the law under the Fourteenth Amendment of the United States Constitution by certain ordinances adopted by the County of Dade, a political subdivision of the State of Florida which:

1. Nullify your Petitioners' by-laws and ordinances regulating traffic on public ways lying wholly within their respective corporate limits, and forbid your Peti-

titioners henceforth from adopting such by-laws and ordinances.

2. Divest your Petitioners' Municipal Courts from all jurisdiction to try offenses against your Petitioners' traffic by-laws and ordinances.

3. Require offenders against by-laws and ordinances regulating traffic wholly within your Petitioners' Corporate limits to be tried in a Court outside the Corporate limits of your Petitioners, wherein the offense was committed.

4. Forbid the policemen employed and paid by your Petitioners to enforce your Petitioners' traffic by-laws and ordinances and require such policemen, under threat of removal, to enforce traffic ordinances of the County of Dade, and to prosecute offenders only in the County's "Metropolitan Court."

5. Divest the Petitioners of all revenues derived from fines and forfeitures in traffic cases, unless Petitioners surrender to the County of Dade, your Petitioners' respective courtrooms and jails, and even in the event of such surrender of your Petitioners' said property, deprive the Petitioners of, and appropriate and convert to the use of the County of Dade, one third of such revenues.

HOW FEDERAL QUESTION WAS PRESENTED

The federal question was raised in these proceedings by Petitioners' Petition for Leave to Intervene on behalf of its residents, citizens, and taxpayers, which reads as follows:

"PETITION FOR LEAVE TO INTERVENE

Come now the CITY OF MIAMI BEACH and VILLAGE OF EL PORTAL, municipal corporations of the State of Florida, and respectfully pray the Court for leave to intervene herein on behalf of, and as representatives of, their respective inhabitants, citizens, and taxpayers, and for grounds show as follows:

1. That said inhabitants, citizens and taxpayers are injured by the provisions of the Charter and ordinances involved herein; that such injury is to interests and rights granted to them by the provisions of the Constitution of the State of Florida and by Articles IX and XIV of the United States Constitution; that such injury is common to all, but that by virtue of the settled jurisprudence of this State, said inhabitants, citizens and taxpayers are unable to sue on their behalf because of inability to allege or prove such injury; that unless petitioners as said representatives are permitted to intervene herein on behalf of said inhabitants, citizens and taxpayers, they will be wholly without remedy. Petitioners pray that they be permitted to file briefs herein in support hereof within such time as the Court may deem reasonable."

Said Petition for Leave to Intervene was timely filed, simultaneously with Petitioners' Petition for Rehearing before the Supreme Court of Florida. Said Petition for Leave to Intervene was denied by said Court on March 30, 1961, by its Order, which reads as follows:

"The appellants in the above cause have filed a petition for leave to intervene in said cause on behalf of, and as representatives of, their respective inhabitants, citizens, and taxpayers, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied."

REASONS FOR GRANTING WRIT OF CERTIORARI

I. The Challenged Ordinances Violate the Fourteenth Amendment to the United States Constitution.

II. The Refusal by the Florida Supreme Court to Permit the Petitioning Municipalities to Intervene in This Cause, For and On Behalf Of, and As Representatives, Of Their Respective Residents, Citizens, and Taxpayers for the Assertion of Their Rights Under the United States Constitution, Constitutes a Deprivation of Due Process of Law Guaranteed By the Fourteenth Amendment.

The genesis of this case is Article VIII, Section 11, of the Florida Constitution (Appendix p. 58) commonly known as the Amendment authorizing Home Rule for Dade County adopted in 1956, and in the Home Rule Charter adopted pursuant thereto in 1957.

The purpose of these artifacts was represented to the electorate as being an allegedly needed cure for the so-called "Local Bill Evil," thereby assuring the citizens of the 26 municipalities in Dade the right to amend their own Charters, without any legislative interposition.

The rights of those citizens to conduct their own municipal affairs and maintain their local institutions was represented to be sacrosanct. Indeed, the Preamble to the Home Rule Charter invoked Deity with a vow reading as follows:

> "We, the people of this County, in order to secure for ourselves the benefits and responsibilities of home rule, to create a metropolitan government to serve our present and future needs, and to endow our municipalities with the rights of self determination in their local affairs, do under God adopt this home rule Charter."

With reference to Petitioners' municipal courts, the Constitutional Amendment gave further assurance for their continued inviolateness, the pertinent portion reading as follows:

> " . . . provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerks thereof although such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided by this Constitution or by general law shall have original jurisdiction to try such offenses . . ."

The pertinency of this excerpt lies in the fact that Petitioners' municipal courts are neither constitutional

courts (under the Florida Constitution) nor were they created by general law. They were created by Special Acts of the Legislature (Appendix p. 62) the same being the respective Charters of your Petitioners.

Notwithstanding the foregoing, the County Commission, immediately following the adoption of the Home Rule Charter, adopted the two ordinances sub judice, namely, Ordinances #57-12 and 57-13, (Appendix p. 63-67)

These ordinances prohibit petitioners (or any other municipality in Dade County) from adopting any ordinance regulating traffic on any public way within their corporate limits; forbids petitioners' policemen, under penalty of dismissal, from enforcing petitioners' traffic codes; orders these policemen, employed and paid by petitioners, to enforce only the County's traffic code; prohibits said policemen to prosecute offenders in petitioners' Courts, also under penalty of dismissal, and requires them to prosecute transgressors solely in the County's so-called "Metro Court."

These ordinances also require petitioners to surrender their respective jails and courtrooms to the County, under penalty of forfeiture of any right to participate in the fines and revenues derived from the "Metro Court." In the event of such surrender, the petitioners would, under the present ordinance, so long as it remains unamended, become entitled to two thirds of such fines and revenues.

The residents, citizens and taxpayers of your petitioning municipalities and petitioners, have continuously

refusel to yield or surrender to this unprecedented usurpation of power, because:

1. They consider the said ordinances the very antithesis of "Home Rule" and the total negation of their rights specifically and explicitly guaranteed them by the Florida Constitution and the Home Rule Charter.

2. The rights of a citizen of the United States, residing by choice within a municipality, to participate in the enactment of local by-laws, to have them enforced in a local court, comprised of local judges, of his selection, and to be tried within the vicinage for any alleged infraction against such local by-laws are natural, inherent, inalienable, common law rights, and are protected by the United States Constitution. The ordinances of the County of Dade involved herein insofar as they abrogate and nullify those rights, invade and violate the Fourteenth Amendment of the Federal Constitution.

3. The ordinances in question confiscate petitioners' public properties held by petitioners in trust for their citizens, residents, and taxpayers, without compensation, and without action, sanction, or authority granted by the Legislature of the State of Florida so to do.

4. The ordinances in question, in result, effect, and in fact, levy a tax upon the residents, citizens and taxpayers of your petitioning municipalities for county purposes, which aside from Article IX, Section 5, of the Florida Constitution (Appendix p. 61) which prohibits the levy of municipal taxes for county purposes, amounts to deprivation of the property of petitioners, and their residents, citizens and taxpayers, because in addition to the normal and usual County taxes paid by both city and non-city taxpayers, they are now subjected to a

double tax for county purposes for the purpose of maintaining a County Court maintained for residents of other municipalities and the unincorporated areas of the County for purely local offenses committed therein; required to pay and maintain a police force for the enforcement of ordinances not of their making, but of a separate governmental entity, and your petitioning municipalities will be compelled to levy additional ad valorem taxes upon their respective taxpayers to replace revenues heretofore normally derived from the fines and forfeitures emanating from their local courts. Such tax is double, arbitrary, discriminatory, and bears no relation to benefits received. Such "tax" has repeatedly and deservedly received the condemnation of this Court.

The right of residents, citizens and taxpayers of municipal corporations to be heard by and through their respective bodies corporate in judicial proceedings is well recognized in certain instances. **Rhyne, Municipal Law, Section 31-1, page 790.**

Petitioners submit that this is such a case and that the denial of that right by the Florida Supreme Court, by its Order refusing them leave to be heard in this litigation was a violation of the Due Process clause of the Fourteenth Amendment, which requires the ameliorative processes of this Court.

CONCLUSION

The so-called "Home Rule" form of government providing for a "Metropolitan" government is an admitted experiment. It avowedly calls for the extirpation and destruction of local municipal government, the bedrock foundation of the rights, freedoms and liberties of American government. The petitioners, their residents, citi-

zens and taxpayers may well echo the lament of their ancestors in the Declaration of Independence, that an arrogant and dictatorial sovereign has "refused his Assent to Laws, the most wholesome and necessary for the public good"; has "made Judges dependent on his Will alone, for the tenure of their office, and the amount and payment of their salaries"; has "erected a multitude of New Offices, and sent their swarms of Officers to harass our People, and eat out their substance"; and "For transporting us beyond Seas to be tried for pretended offenses"; and "For imposing taxes on us without our Consent."

This case is of transcendent importance in the cause of preserving rights and liberties bought and paid for through dear experience. This Court represents the last hope of petitioners, their residents, citizens and taxpayers that those rights and liberties will be held inviolate.

Petitioners, their residents, citizens and taxpayers most earnestly pray that this Court vacate the Orders of the Florida Supreme Court dismissing their appeal, and denying them leave to intervene therein.

Respectfully submitted,

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Attorney for Petitioners

Of Counsel:
JOSEPH A. WANICK,
City Hall,
Miami Beach, Florida.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Writ of Certiorari and Appendix thereto has been served by me this date personally upon Darrey A. Davis, Esq., attorney for the County of Dade, respondent herein this ____ day of June, 1961.

JOSEPH A. WANICK
of Counsel for Petitioners

APPENDIX

TRANSCRIPT OF RECORD

COMPLAINT FOR DECLARATORY DECREE AND INJUNCTIVE RELIEF

"IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY NO. 59C 6606

DADE COUNTY, a political subdivision of the State of Florida,

Plaintiff,

vs.

CITY OF CORAL GABLES; VILLAGE OF EL PORTAL; CITY OF MIAMI BEACH; and TOWN OF MIAMI SPRINGS, municipal corporations of and in Dade County, Florida,

Defendants.

The plaintiff, DADE COUNTY, a political subdivision of the State of Florida, files this its complaint for declaratory decree and injunctive relief against the defendants, CITY OF CORAL GABLES, VILLAGE OF EL PORTAL, CITY OF MIAMI BEACH, and TOWN OF MIAMI SPRINGS, which are municipalities of and in Dade County, Florida, created and existing under and by virtue of special acts of the Legislature, and the plaintiff alleges:

1) The Supreme Court of Florida in upholding the validity of the Dade County Home Rule Amendment to the Florida Constitution **(Gray v. Golden, Fla. 1956, 89 So. 2nd 785)**, found and determined: "That Dade is the most populous county in the state; that Miami in said county is the largest city in the state; that there are twenty-six municipalities in Dade County. . . Dade County (is) one of the great metropolitan areas of the world . . . that few, if any, municipalities in Dade County are composed of a cohesive, homogeneous population since practically all of them are interdependent in many ways; that there are thousands of people in Dade County who live in one municipality, have employment, offices, positions or working places in another, shop or trade in another and whose children attend school in still another. The density of population, common transportation and communication facilities, the mutual dependence on public utilities, the unified economy of the county, the common problem . . . of transportation . . . demonstrate that municipal boundary lines are little more than artificial barriers that are outmoded by present needs and conditions. . . ."

2) Dade County, according to the last official Federal census, had a population of 495,084 in 1950. By 1955 Dade County's population had increased to 713,757. On the basis of a population survey conducted by the University of Miami, the county population, as of April, 1958, stood at 860,000. In October, 1958, Dade's population was approximately 892,000. It is reliably estimated that the one million population mark will be reached by 1960, the million and half mark by 1968, and the two million mark by 1977. According to a recent traffic study conducted by the County Department of Traffic and Transporta-

tion, Dade County has 567 motor vehicles for each 1000 persons. This constitutes the highest ratio of vehicle registration of any metropolitan area in the United States. While Dade's ratio is 567 vehicles for each 1000 population, Los Angeles County has only 454 vehicles per 1000 population, and Washington, D. C. has 240 motor vehicles per 1000 population. It is universally recognized and agreed that the congestion created by ever increasing traffic constitutes the most urgent and pressing problem of Metropolitan Dade County. Traffic accidents and fatalities have increased at an alarming rate as a result of growing density of motor vehicular traffic and ineffective traffic control.

3) Prior to the enactment of the Traffic Ordinance of Dade County, Florida (County Ordinance No. 57-12), each of the twenty-six municipalities operated under its own independent traffic regulations. Motorists travelling through the territorial areas of Dade County were confronted with twenty-six different traffic laws. Confusion and inequities existed by virtue of the multiplicity of independent and divergent municipal ordinances governing traffic in Metropolitan Dade County. Traffic offenses were tried in twenty-six part-time municipal courts. The regulation and control of traffic, and the trial of traffic violations, in the metropolitan area varied greatly. Graphically, it might be accurately depicted as a series of peaks and valleys--some municipalities effectively provided for the control and regulation of traffic, others had virtually no appropriate traffic controls, some maintained "speed traps" for revenue purposes only. The Dade County Grand Jury reported that one municipality derived approximately 86 percent of its entire receipts from traffic revenues. As aptly stated by Mr. Justice Sturgis

in **Miami Shores Village v. Cowart, Fla. 1958, 108 So. 2nd 468:** "It is difficult to imagine a field in which a central metropolitan government could more effectively function than in that of removing the confusion, inequities resulting from a multiplicity of independent municipal ordinances governing the control of traffic and parking in highly congested and contiguous metropolitan areas."

4) In order to provide an appropriate solution to the increasing traffic problem in Metropolitan Dade County, the Board of County Commissioners, in the exercise of the powers expressly granted in and by the Home Rule Charter, on September 25, 1957, duly adopted and enacted an ordinance establishing a master plan for the uniform control of traffic throughout the County, in both the unincorporated and incorporated areas. This ordinance, numbered 57-12, known as the "Traffic Ordinance of Dade County, Florida", expressly nullified and superseded all the traffic ordinances of each and all of the twenty-six municipalities of Dade County, and provided uniform, county-wide regulations governing and controlling traffic for the entire County. Such County traffic ordinance became effective on March 1, 1958, and has been in full force and effect continuously since that date. It provides:

> "2.01-2. It shall be the duty of all Municipal Police Officers to enforce all provisions of this ordinance and of the State Vehicular Laws applicable to street and highway traffic within the municipalities wherein they are employed. Arrests shall be made for violations thereof, and such Municipal Police Officers shall prosecute the same only in the Metropolitan Court."

* * * * * *

"26.01. It is provided that this ordinance shall pertain to all violations hereof within Dade County, Florida, and supersedes and nullifies any and all municipal ordinances or codes . . . relative to the regulation and enforcement of traffic."

* * * * * *

"26.06. This ordinance is applicable in all the unincorporated and incorporated areas of Dade County, Florida."

* * * * * *

"2.02. **Required obedience to Traffic Ordinance.** It shall be unlawful for any person to do any act forbidden or fail to perform any act required in this Traffic Ordinance."

5) The validity and constitutionality of the "Traffic Ordinance of Dade County, Florida" has been sustained and upheld by the courts. In **Miami Shores Village v. Cowart, 12 Fla. Supp. 168** (June 27, 1958) the Circuit Court of Dade County held:

"That Dade County Ordinance No. 57-12, adopting a master plan for the control of traffic, establishing regulations and setting penalties for violations thereof, known as 'The Traffic Ordinance of Dade County, Florida', sometimes referred to as the 'Metropolitan Traffic Code', was lawfully enacted under and pursuant to, and in accordance with, the Home Rule Charter of

> government for Dade County, and is applicable in all the unincorporated and incorporated areas of Dade County and **supersedes and nullifies all municipal traffic ordinances, resolutions, and codes of the several municipalities** in Dade County."

On appeal, the Supreme Court of Florida, in **Miami Shores Village v. Cowart, Fla. 1958, 108 So. 2nd 468,** affirmed the final decree of the Circuit Court, and held:

> "The particular regulation here brought into question—an ordinance establishing uniformity of traffic control and enforcement throughout the metropolitan area—is specifically "authorized by Section 1.01A(1) of the Home Rule Charter and is in accord with the intent and purpose of the constitutional authority granted by the Home Rule Amendment."

6) Each and all of the twenty-six municipalities of Dade County, except the municipalities named as defendants herein, presently enforce, recognize, observe and adhere to the provisions of the "Traffic Ordinance of Dade County, Florida". Such ordinance establishing uniformity of traffic control and enforcement throughout Metropolitan Dade County is being enforced by all municipal police officers, except within the boundaries of the defendant municipalities. Notwithstanding the controlling rule of law enunciated by the court, the respective governing bodies of the defendant municipalities adamantly refuse to recognize the validity of the "Traffic Ordinace of Dade County, Florida". They refuse to permit their respective municipal police officers to enforce

the County traffic ordinance or to make arrests for violations thereof or to prosecute the same in the Metropolitan Court. The defendant municipalities persist in enforcing their own independent municipal traffic regulations and trying violations thereof in their own municipal courts. The defendant municipalities contend that the judgment and mandate of the Supreme Court of Florida is not binding on them; that their respective independent municipal traffic ordinances supersede and nullify the "Traffic Ordinance of Dade County"; that such County ordinance is invalid and unconstitutional insofar as it pertains to the defendant municipalities; and that the "Traffic Ordinance of Dade County, Florida" unreasonably and unlawfully interferes with the "autonomy" of the defendant municipalities. The defendant municipalities refuse to recognize or conform to the opinion and mandate of the Supreme Court of Florida in **Miami Shores Village v. Cowart, Fla. 1958, 108 So. 2nd 468.**

7) On the contrary, the plaintiff asserts that, under the express provisions of the Dade County Home Rule Amendment to the Florida Constitution and the Home Rule Charter, and the binding and controlling decisions of the Supreme Court of Florida, the "Traffic Ordinance of Dade County, Florida" supersedes and nullifies the various and sundry traffic regulations of the defendant municipalities; and that the defendant municipalities are unlawfully persisting in compelling their respective municipal police officers to enforce their independent traffic ordinances in direct conflct with the express provisions of the Home Rule Charter and lawful ordinances enacted thereunder, and contrary to the clear and binding rule of law established by the court. The plaintiff avers that the traffic ordinances of the respective municipalities

named as defendants herein are null and void and of no lawful force and effect; that the "Traffic Ordinance of Dade County, Florida" constitutes the only lawful ordinance governing and controlling traffic in Metropolitan Dade County, and within the territorial areas of the defendant municipalities, as hereinafter more particularly set forth and alleged. The plaintiff asserts that the opinion and mandate of the Supreme Court of Florida in **Miami Shores Village v. Cowart, Fla. 1958, 108 So. 2nd 468,** is determinative and controlling in respect to the issues raised by the contentions of the defendant municipalities.

8) This suit is instituted pursuant to the provisions of Resolution No. 3485, adopted on June 30, 1959, by the Board of County Commissioners of Dade County, Florida, in the public interest and welfare for the benefit of all citizens and residents of Metropolitan Dade County. By reason of the fact that all motorists and pedestrians utilizing the streets and highways in Dade County are governed by the provisions of the "Traffic Ordinance of Dade County, Florida", and subject to penalties for violations of such county-wide traffic ordinance, and the defendant municipalities insist that all persons utilizing streets and highways within the boundaries of such municipalities are governed by the independent traffic laws of said municipalities and subject to penalties for violation of such municipal traffic violations, great confusion, doubt and uncertainty exist in respect to the rights, duties, responsibilties and liabilities of all citizens of Dade County who use the streets and highways of the defendant municipalities. More than fifty (50%) percent of all persons charged with violations of the traffic regulations of such defendant municipalities are not residents of these munici-

palities, but are residents of other municipalities or of the County. Residents of other municipalities, the County, and other counties in Florida, are daily being unlawfully charged with violations of traffic regulations imposed by the defendant municipalities, and tried in the municipal courts of the defendant municipalities, contrary to law and in derogation of their lawful rights. The plaintiff respectfully avers that the public interest and welfare require that such existing doubt, confusion and uncertainty affecting every citizen and resident of Metropolitan Dade County should be resolved at the earliest possible time by appropriate order and decree of this court.

9) The plaintiff asserts the validity of the "Traffic Ordinance of Dade County, Florida" (Ordinance No. 57-12) and the "Metropolitan Court Ordinance" (Ordinance No. 57-13) under and pursuant to the following:

(a) The 1955 State Legislature adopted Joint Resolution 1046 proposing an amendment to Section 11 of Article VIII of the Florida Constitution by which the electors of Dade County were empowered to adopt and effectuate a home rule charter of government for Dade County in local affairs. This proposed Constitutional Amendment was submitted to and ratified by the voters of the State of Florida at the general election held on November 6, 1956. This Constitutional Amendment, among other things, provides:

> "Section 11. DADE COUNTY, HOME RULE CHARTER — (1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under

which the Board of County Commissioners of Dade County shall be the governing body. This charter:"

• • •

"(b) May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; . . . and do everything necessary to carry on a central metropolitan government in Dade County."

• • •

"(d) May provide a method by which any and all of the functions and powers of any municipal corporation or other governmental unit in Dade County may be transferred to the Board of County Commissioners of Dade County."

• • •

"(f) . . . Such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses . . ."

(b) The State Legislature enacted Chapter 31420, Acts of 1956, Laws of Florida, creating the Metropolitan Charter Board and providing the method for presenting the home rule charter of government to the voters of Dade County for ratification or rejection.

(c) Under and pursuant to the provisions of the Constitutional Amendment and legislative enactment aforesaid, a Home Rule Charter was submitted to and approved by the electors of Dade County at a special election held on May 21, 1957. This Home Rule Charter was duly filed for record in Official Records Book 182, at Page 667 of the Public Records of Dade County, Florida, and has been in full force and effect throughout the territorial area of Dade County continuously since July 20, 1957, the effective date provided herein. The Home Rule Charter, among other things, provides:

"ARTICLE 1. BOARD OF COUNTY COMMISSIONERS

Section 1.01. **Powers.**

A. The Board of County Commissioners shall be the legislative and governing body of the county and shall have the power to carry on a central metropolitan government. This power shall include but shall not be restricted to the power to:

(1) . . . develop and enforce master plans for the control of traffic and parking.

* * *

(21) Exercise all powers and provileges granted to municipalities . . .

"(22) Adopt such ordinances and resolutions as may be required in the exercise of its powers, and prescribe fines and penalties for the violation of ordinances.

(23) Perform any other acts consistent with law which are required by this charter or which are in the common interest of the people of the county.

* * *

ARTICLE 6. METROPOLITAN COURT

Section 6.01. **Metropolitan Court Established.**

A. A court is hereby established, the name of which shall be the Metropolitan Court . . .

* * *

Section 6.02. **Jurisdiction And Procedure.**

A. The Court shall have jurisdiction to try all cases arising under ordinances adopted by the Board."

Section 8.04. **Supremacy Clause.**

A. This Charter and the ordinances

> adopted hereunder shall in cases of conflict supersede all municipal charters and ordinances, except as herein provided, and where authorized by the Constitution, shall in cases of conflict supersede all special and general laws of the state."

(d) The Board of County Commissioners, as the legislative and the governing body of Dade County under the Home Rule Charter, on September 25, 1957, duly adopted and enacted an ordinance, numbered 57-13, for the purpose of implementing and effectuating the establishment of the Metropolitan Court created in and by Article 6 of the Charter. This ordinance became effective on March 1, 1958, and the Metropolitan Court of Dade County has been continuously since, functioning and exercising its jurisdictional powers. The Metropolitan Court Ordinance, among other things, provides:

> "Section 3.02. **Jurisdiction.** The Court shall have exclusive original jurisdiction to try all cases arising under ordinances adopted by the Commission.
>
> • • • • • •
>
> Section 3.26. **Repeal.** All county and municipal ordinances, county and municipal resolutions, municipal charters, special laws applying to this county and general laws applying only to this county or any general law which this Commission is specifically authorized by the Constitution to supersede, nullify or amend, or any part of any such ordinance, resolution, charter

or law in conflict with any provision contained herein, is hereby repealed."

(e) The Board of County Commissioners, as the legislative and the governing body of Dade County under Home Rule Charter, on September 25, 1957, duly adopted and enacted a comprehensive traffic ordinance to develop and enforce a uniform master plan for the control of traffic and parking in Metropolitan Dade County, numbered 57-12, known and designated as the "Traffic Ordinance of Dade County, Florida". Such county traffic ordinance became effective on March 1, 1958, and has been continuously in full force and effect in all the territorial areas of Dade County since that date. Said ordinance, among other things, contains the provisions set forth in paragraph 4 hereinabove, and is made a part hereof by reference.

(f) By virtue of the foregoing, the plaintiff avers that the County ordinances numbered 57-12 and 57-13 superseded and nullified all traffic ordinances and traffic regulations of the defendant municipalities, and that, therefore, the defendant municipalities are unlawfully causing their respective police officers to enforce such municipal traffic ordinances and to make arrests for violations thereof and prosecuting traffic offenses in their municipal courts; that the municipal courts of the defendant municipalities are devoid of all jurisdiction to try traffic offenses.

10) The plaintiff alleges that the appropriate determination of the questions of law constituting the subject of this cause and the controversy, confusion, doubt and uncertainty created by the actions of the respective

governing bodies of the defendant municipalities is essential to the orderly administration of the local government existing in Dade County, Florida, under and by virtue of the Constitutional Amendment, the Home Rule Charter, and County ordinances enacted under and pursuant thereto. The actions of the respective governing bodies of the defendant municipalities constitutes a continuing threat to the metropolitan government of Dade County in the exercise of the powers conferred by the Constitutional Amendment and Charter; and the judicial determination and settlement of the issues raised by this ligitigation is a matte of great public interest, and the speedy answer thereto will necessarily provide for the orderly administration of government in Dade County.

WHEREFORE, the plaintiff respectfully prays as follows:

1) That the Court will grant preliminary injunctive relief enjoining and restraining the defendants from further causing their respective police officers to enforce their municipal traffic ordinances, to make arrests for violations of such municipal traffic regulations, and trying such traffic offenses in their municipal courts; and requiring the defendant municipalities to enforce, recognize and comply with the controlling County ordinances governing the control of traffic and the trial of violations thereof.

2) That the Court, by declaratory decree, will determine and adjudicate that the "Traffic Ordinance of Dade County, Florida" supersedes and nullifies all municipal traffic regulations; and that the traffic ordinances of the defendant municipalities are null and void and of no lawful force and effect.

3) That the Court will upohld and sustain the validity and constitutionality of County ordinances numbered 57-12 and 57-13, insofar as such ordinances pertain to, regulate, control and govern the defendant municipalities.

4) That the Court, upon final hearing, will permanently enjoin and restrain the defendant municipalities from attempting to enforce any municipal traffic regulations or make arrests for violations of such municipal traffic ordinances or try traffic offenses in their municipal courts; and permanently require the defendant municipalities to enforce, recognize and conform to the controlling County ordinances governing traffic.

DARREY A. DAVIS
County Attorney
1626 Courthouse
Miami, Florida

STATE OF FLORIDA)
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared WALTER WEISS, who first by me duly sworn, deposes and says that he is the Chairman of the Board of County Commissioners of Dade County, Florida; that he has read the above and foregoing Complaint for Declaratory Decree and Injunctive Relief and knows the contents thereof, and that the facts and matters therein set forth and alleged are true to the best of his knowledge, information and belief.

/s/ WALTER WEISS
WALTER WEISS

Sworn to and subscribed before me this 13th day of July, 1959.

E. B. LEATHERMAN
Clerk of the Circuit Court
By: E. B. Leatherman
Clerk
(OFFICIAL SEAL)

ANSWER

[CAPTION OMITTED]

The defendant, CITY OF MIAMI BEACH, a Florida municipal corporation, for answer to the complaint filed herein, says:

1. It denies the allegations of Paragraph 1 of the complaint.

2. It admits the allegations in Paragraph 2 of the complaint beginning with the words "Dade County, . . ." and ending with the words ". . . approximately 892,000." It denies the allegations in said paragraph beginning with the words "it is universally recognized . . ." and ending with the words "traffic control." It is without knowledge of the remaining allegations in Paragraph 2 and therefore denies the same.

3. It admits that the extract from the case of **Miami Shores Village v. Cowart** set forth in Paragraph 3 of the complaint is correctly quoted. It denies the remaining allegations of said paragraph.

4. It admits the allegation in Paragraph 4 of the complaint that the Board of County Commissioners on September 25, 1957 adopted Ordinance numbered 57-12. It admits that said ordinance purports and attempts to supersede "all the traffic ordinances of each and all of the twenty-six municipalities of Dade County" but alleges that said provision of said ordinance contravenes and violates Sections 8 and 11 of Article VIII of the Constitution of the State of Florida and is therefore invalid, void and unconstitutional. It admits that the excerpts from said ordinance set forth in said paragraph are correctly quoted, but defendant further alleges the provisions of said ordinance so set forth violate and contravene Sections 8 and 11 of Article VIII, and Section 5 of Article IX of the Constitution of the State of Florida and are therefore invalid, void and unconstitutional. It denies the remaining allegations of said paragraph of the complaint.

Further answering said paragraph, the defendant says that said ordinance violates the provisions of the Home Rule Charter purportedly adopted under the authority of Section 11, Article VIII of the Constitution of the State of Florida and that said ordinance is therefore invalid and void.

5. The defendant admits that the extracts from the judicial opinions set forth in Paragraph 5 of the complaint are correctly quoted.

6. It admits all of the allegations set forth in Paragraph 6 of the Complaint, with the exception of the allegations that "said ordinance establish(es) uniformity of traffic control and enforcement in Metropolitan Dade County," and that this defendant's actions are not in

conformity with "the controlling rule of law" set forth in the "opinion and mandate . . . in **Miami Shores Village v. Cowart**, Fla. 1958, 108 So. (2) 468", which allegations are denied.

7. The defendant admits that the plaintiff "asserts" and "avers" the propositions and conclusions set forth in Paragraph 7 of the complaint, but denies that the propositions so asserted or averred are in accordance with, or justified by, law.

8. It admits the allegations in Paragraph 8 of the complaint that it "insist(s) that all persons utilizing streets and highways within (its boundaries) are governed by the independent traffic laws of said municipalit(y) and subject to penalties for violation (thereof)." It denies the remaining allegations of said paragraph.

9. It denies the allegations in Paragraph 9, subparagraph (e) that Ordinance No. 57-12 was adopted and enacted as a comprehensive ordinance to develop and enforce a uniform master plan for the control of traffic and parking in Metropolitan Dade County and that the same has been continuously in full force and effect in all the territorial areas of Dade County since March 1, 1958.

It denies the allegations of Paragraph 9, subparagraph (f) of the complaint.

It admits the remaining allegations in Paragraph 9 of the complaint.

10. It denies the allegations of Paragraph 10 of the complaint.

11. For further answer to the complaint the defendant says that it is provided by Section 8.04 of the Dade County Home Rule Charter, that ordinances adopted by the Board of County Commissioners shall supersede municipal charters and ordinances only "in cases of conflict", and that Ordinances No. 57-12 and No. 57-13, described in the complaint are not in conflict with the defendant's Charter or Ordinances, and that Ordinance No. 57-12, and the defendant's Traffic Ordinance are now and at all times material herein, have been identical in their provisions and verbiage.

12. For further answer to the complaint the defendant says that Dade County Ordinances Nc 57-12 and No. 57-13 are in violation of Section 5 and 10 of Article IX of the Constitution of the State of Florida in that it requires the defendant to obtain or appropriate money for, and to pledge its credit to Dade County, and require the defendant to assess and impose municipal taxes for county purposes.

13. For further answer to the complaint, the defendant says that the control and regulation of traffic, and the establishment and maintenance of its municipal court were recognized by the Metropolitan Charter Board as lying wholly within the local jurisdiction of this and other municipal corporations within Dade County, and that it was not the intention of said Board or said Charter that the same Charter should be used to destroy "the right of self-determination" reserved and preserved to this defendant, and the other municipalities of Dade County by Section 5.01 of the Home Rule Charter.

14. For further answer to the complaint, the de-

fendant says that its Traffic Ordinance is enacted under and pursuant to authority granted it by general law, relating to any municipality in Dade County and any other one or more municipalities of the State of Florida, and that plaintiff's Ordinance No. 57-12 is null, void and unconstitutional in that it purports to nullify and supersede such general law of the State of Florida.

15. For further answer to the complaint, the defendant says Section 2.01-2 of Plaintiff's Ordinance No. 57-12 and any and all portions thereof requiring defendant's municipal officers to enforce plaintiff's ordinance is wholly without authority; and is null, void, unconstitutional, and of no force and effect whatsoever.

JOSEPH A. WANICK
Attorney for Defendant City of Miami Beach
1130 Washington Avenue
Miami Beach, Florida

(Certificate of Service Omitted)

ANSWER

The defendant, VILLAGE OF EL PORTAL, a Florida municipal corporation, for answer to the complaint filed herein, says:

1. It denies the allegations of Paragraph 1 of the complaint.

2. It admits the allegations in Paragraph 2 of the

complaint beginning with the words "Dade County. . . ." and ending with the words ". . . approximately 892,000." It denies the allegations in said paragraph beginning with the words "it is universally recognized . . ." and ending with the words "traffic control." It is without knowledge of the remaining allegations in Paragraph 2 and therefore denies the same.

3. It admits that the extract from the case of **Miami Shores Village v. Cowart** set forth in Paragraph 3 of the complaint is correcelty quoted. It denies the remaining allegations of said paragraph.

4. It admits the allegations in Paragraph 4 of the complaint that the Board of County Commissioners on September 25, 1957 adopted Ordinance numbered 57-12. It admits that said ordinance purports and attempts to supersede "all the traffic ordinances of each and all of the twenty-six municipalities of Dade County" but alleges that said provision of said ordinance contravenes and violates Sections 8 and 11 of Article VIII of the Constitution of the State of Florida and is therefore invalid, void and unconstitutional. It admits that the excerpts from said ordinance set forth in said paragraph are correctly quoted, but defendant further alleges the provisions of said ordinance so set forth violate and contravene Sections 8 and 11 of Article VIII, and Section 5 of Article IX of the Constitution of the State of Florida and are therefore invalid, void and unconstitutional. It denies the remaining allegations of said paragraph of the complaint.

Further answering said paragraph the defendant says that said ordinance violates the provisions of the Home Rule Charter purportedly adopted under the author-

ity of Section 11, Article VIII of the Constitution of the State of Florida and that said ordinance is therefore invalid and void.

5. The defendant admits that the extracts from the judicial opinions set forth in Paragraph 5 of the complaint are correctly quoted.

6. It admits all of the allegations set forth in Paragraph 6 of the complaint, with the exception of the allegations that "said ordinance establish(es) uniformity of traffic control and enforcement in Metropolitan Dade County," and that this defendant's actions are not in conformity with "the controlling rule of law" set forth in the "opinion and mandate . . . in **Miami Shores Village v. Cowart**, Fla. 1958, 108 So. 2nd 468", which allegations are denied.

7. The defendant admits that the plaintiff "asserts and avers" the propositions and conclusions set forth in Paragraph 7 of the complaint, but denies that the propositions so asserted or avvered are in accordance with, or justified by, law.

8. It admits the allegations in Paragraph 8 of the complaint that it "insist(s) that all persons utilizing streets and highways within (its boundaries) are governed by the independent traffic laws of said municipality) and subject to penalties for violation (thereof)." It denies the remaining allegations of said paragraph.

9. It denies the allegations in Paragraph 9, subparagraph (e) that Ordinance No. 57-12 was adopted and enacted as a comprehensive ordinance to develop and en-

force a uniform master plan for the control of traffic and parking in Metropolitan Dade County and that the same has been continuously in full force and effect in all the territorial areas of Dade County since March 1, 1958.

It denies the allegations of Paragraph 9, subparagraph (f) of the complaint.

It admits the remaining allegations in Paragraph 9 of the complaint.

10. It denies the allegations of Paragraph 10 of the complaint.

11. For further answer to the complaint the defendant says that it is provided by Section 8.04 of the Dade County Home Rule Charter, that ordinances adopted by the Board of County Commissioners shall supersede municipal charters and ordinances only "in cases of conflict", and that Ordinances No. 57-12 and No. 57-13, described in the complaint are not in conflict with the defendant's Charter or ordinances, and that Ordinance No. 57-12, and that defendant's Traffic Ordinance are now and at all times material herein, have been identical in their provisions and verbiage.

12. For further answer to the complaint the defendant says that Dade County Ordinances No. 57-12 and No. 57-13 are in violation of Sections 5 and 10 of Article IX of the Constitution of the State of Florida in that it requires the defendant to obtain or appropriate money for, and to pledge its credit to Dade County, and require the defendant to assess and impose municipal taxes for county purposes.

13. For further answer to the complaint, the defendant says that the control and regulation of traffic, and the establishment and maintenance of its municipal court were recognized by the Metropolitan Charter Board as lying wholly within the local jurisdiction of this and other municipal corporations within Dade County, and that it was not the intention of said Board or said Charter that the same Charter should be used to destroy "the right of self-determination" reserved and preserved to this defendant, and the other municipalities of Dade County by Section 5.01 of the Home Rule Charter.

14. For further answer to the complaint, the defendant says that its Traffic Ordinance is enacted under and pursuant to authority granted it by general law, relating to any municipality in Dade County and any other one or more municipalities of the State of Florida, and that plaintiff's Ordinance No. 57-12 is null, void and unconstitutional in that it purports to nullify and supersede such general law of the State of Florida.

15. For further answer to the complaint, the defendant says Section 2.01-2 of Plaintiff's Ordinance No. 57-12 and any and all portions thereof requiring defendant's municipal officers to enforce plaintiff's ordinance is wholly without authority; and is null, void, unconstitutional, and of no force and effect whatsoever.

(Signature and Certificate of Service Omitted)

FINAL DECREE

June 28, 1960

[CAPTION OMITTED]

This is another of the series of suits involving the validity of the Traffic Ordinance of Dade County (Ordinance No. 57-12) and the Metropolitan Court Ordinance (Ordinance No. 57-12). Although the validity of these county ordinances has been sustained and upheld in a number of decisions rendered by the Supreme Court of Florida, the District Court of Appeal, Third District, and the Circuit Court of Dade County, the City of Miami Beach and the Village of El Portal contend in this litigation that the provisions of these ordinances are not binding upon them and that none of the previous Court decisions are applicable or binding. These contentions are predicated upon the premise that the Traffic Ordinance and Metropolitan Court Ordinance constitute an unlawful exercise of legislative power by the County Commission infringing upon the supremacy of the Constitution and the general laws of Florida.

There are twenty-six municipalities in Dade County. Each and all of them observe and enforce the Traffic Ordinance of Dade County, except the City of Miami Beach and the Village of El Portal. The Traffic Ordinance of Dade County, which is a direct regulatory plan designed to establish uniformity of traffic control and enforcement throughout all of Metropolitan Dade County, operates uniformly on a county-wide basis, except within the municipal boundaries of Miami Beach and El Portal. Within the territorial areas of these two municipalities,

municipal traffic ordinances adopted after the institution of this suit are enforced and all violations thereof are tried in the municipal courts of such municipalities.

Since the effective date of the Traffic Ordinance of Dade County and the Metropolitan Court Ordinance, the Circuit Court of Dade County, on innumerable occasions, in municipal appeals, certiorari, habeas corpus and prohibition proceedings brought by citizens charged with violations of municipal traffic ordinances, has uniformly and invariably held all municipal traffic ordinances are superseded by the Traffic Ordinance of Dade County; that the Metropolitan Court has exclusive original jurisdiction to try violations thereof, and that municipal courts are without jurisdiction to try traffic offenses. In **State ex rel. Clure H. Mosher v. City of Miami Beach,** Fla. App. 1960, ___ So. 2d __, decided on May 23, 1960, the petitioner was arrested and charged with violations of the Miami Beach Traffic Ordinance and required to post bond in the amount of $275.00. He filed prohibition proceedings challenging the jurisdiction of the municipal court to try him for such alleged traffic offenses. The Court granted a writ of prohibition holding that the municipal court lacked jurisdiction and prohibiting the Judges of the municipal court of Miami Beach from taking any further action or maintaining jurisdiction in respect to such matter, "other than to transfer the cause and docket to the Metropolitan Court, Dade County, Florida". Rather than transfer this serious alleged traffic offense to the Metropolitan Court in accordance with the provisions of the Dade County Traffic Ordinance and Metropolitan Court Ordinance, Miami Beach dropped the charges. The attorney and legal advisor for the City of Miami Beach and the Village of El Portal stated in open court (Tr. 34):

"It is upon my advice that whenever those suits for prohibition against the Municipal Court of Miami Beach or Village of El Portal are filed that we do not transfer the traffic violator — the alleged traffic violator to the jurisdiction of the Metropolitan Court for the reason that if we so did . . . we have waived our right to challenge the validity of the Metro Traffic Ordinance . . . and that being the case, it is obvious that a defendant charged with an offense on Miami Beach knows, by virtue of my position, that if he gets a writ of prohibition that the City of Miami Beach will not transfer the case to the Metropolitan Court . . . ".

It is amazing and curious public policy on the part of municipal governments that will permit and condone turning loose traffic offenders (including those charged with driving while intoxicated), rather than recognize any authority of the county government to provide uniform traffic regulations on a county-wide basis. As Mr. Justice Sturgis said in **Miami Shores Village v. Cowart**, Fla. 1958, 108 So. 2d 468: "It is difficult to imagine a field in which a central metropolitan government could more effectively function than in that of removing the confusion, inequalities, and inequities resulting from a multiplicity of independent municipal ordinances governing the control of traffic and parking in highly congested and contiguous metropolitan areas".

In a metropolitan area experiencing explosive population increases, confronted with more motor vehicles per capita than anywhere else in the Nation, and where increasing traffic fatalities and mounting automobile insurance costs pose problems of serious concern, the philosophy of stubborn and continuing opposition to a county

legislative program designed to provide uniformity of traffic control and enforcement throughout this metropolitan area, because such program might infringe upon and detract from the autonomy of traditional municipal sovereighty, comes with ill grace and exerts little persuasive force upon the exercise of discretionary powers of this Court. However, these defendant municipalities are entitled to receive a careful and impartial judicial review, consideration and determination of their contentions that, as a matter of law, the Traffic Ordinance of Dade County and the Metropolitan Court Ordinance are invalid and unconstitutional.

The Traffic Ordinance of Dade County was enacted on September 20, 1957, and the effective date thereof was ultimately fixed as March 1, 1958. The Metropolitan Court Ordinance was enacted September 25, 1957, effective on October 5, 1957. The validity and constitutionality of such ordinances were challenged and determined by this Court in **Miami Shores Village v. County Commissioners**, 12 Fla. Supp. 168; on appeal the Supreme Court affirmed such Circuit Court decree in **Miami Shores Village v. Cowart**, Fla. 1958, 108 So. 2d 468.

To the end that the provisions of such county ordinances might be effectuated and enforced throughout Dade County, in both the incorporated and unincorporated areas, the County Commission invited all municipalities to a meeting on May 18, 1959, to discuss and arrive at mutually satisfactory procedures for making the transition to uniformity in traffic control and enforcement on a county-wide basis (Plaintiff's Exhibit "C"). Thereafter, all municipalities, except Miami Beach, El Portal, Miami Springs and Coral Gables, conformed to and recognized

the validity of such regulatory ordinances. The County Commission, by Resolution No. 3485, adopted June 30, 1959, directed the County Attorney to take appropriate legal action for and on behalf of Dade County to compel such municipalities to adhere to, comply with and recognize the validity and lawful force and effect of the Traffic Ordinance and Metropolitan Court Ordinance.

This suit was instituted July 13, 1959, on behalf of Dade County by the filing of a verified complaint seeking a declaratory decree adjudicating that the Traffic Ordinance of Dade County superseded and nullified all municipal traffic regulations and that the traffic ordinances of the City of Miami Beach, Village of El Portal, Town of Miami Springs and City of Coral Gables were null and void and of no force and effect; and praying for preliminary and permanent injunctive relief enjoining and restraining the defendant municipalities from further causing their respective police officers to enforce their municipal traffic ordinances, and to make arrests for violations of such municipal traffic regulations, and from trying such traffic offenses in their municipal courts; and requiring the defendant municipalities to enforce and comply with the controlling county ordinances governing the control of traffic and trial of traffic offenses.

Subsequent to the commencement of this litigation, the City of Coral Gables and the Town of Miami Springs have commenced enforcing and complying with such county ordinances. This cause has become moot as to such municipalities, and they are dismissed as parties defendant herein. The only remaining defendants are the City of Miami Beach and the Village of El Portal.

On July 21, 1959, after due notice and hearing, the Court granted the preliminary injunctive relief prayed for in plaintiff's verified complaint in accordance with the principles of law enunciated in **Sax Enterprises v. Hotel Employees Union**, Fla. 1955, 80 So.2d 602; and **Boca Raton Club v. Hotel Employees Union**, Fla. 1955, 80 So.2d 680, by granting a preliminary injunctive order enjoining the defendant municipalities from further enforcing their municipal traffic regulations and ordering them to recognize and conform to the county traffic ordinance.

The City of Miami Beach and Village of El Portal took an interlocutory appeal to the Supreme Court of Florida fro mthe preliminary injunctive order and stayed the operation and effect thereof. The Supreme Court transferred jurisdiction of such interlocutory appeal to the District Court of Appeal, Third District, and the District Court of Appeal, on October 16, 1959, entered the following order (Plaintiff's Exhibit "G"):

> "Pursuant to rule 4.2f, Florida Appellate Rules, the Court does hereby reserve ruling on the above interlocutory appeal until final disposition of the cause by the trial court.
>
> The effect of this ruling is to leave this interlocutory appeal pending, and to defer decision until after entry of a final decree in the cause. Upon filing in this Court of a certified copy of a final decree in the cause, this appeal will be set for hearing or otherwise disposed of by the Court."

Pursuant to Order entered on March 24, 1960, this

cause came on for trial and final hearing before the Court upon the issues made by the complaint and the respective answers filed by the City of Miami Beach and Village of El Portal, on June 10, 1960. The Court has carefully reviewed and considered the pleadings, the testimony adduced and the evidentiary exhibits filed at the preliminary hearing on July 20, 1959, and the final hearing, and has heard and considered extensive arguments of counsel. Counsel were also afforded the opportunity to submit briefs. No material factual issues are involved in this cause. The questions presented for determination involve the validity and constitutionality of the Traffic Ordinance of Dade County and the Metropolitan Court Ordinance.

The constitutionality and validity of the county ordinances here involved have been determined and resolved by the Supreme Court of Florida in **Miami Shores Village v. Cowart**, Fla. 1958, 108 So.2d 468. The controlling principles of law established in the Miami Shores suit have been cited with approval and followed in **City of Miami v. Keton**, Fla. 1959, 115 So.2d 547; **City of Miami Beach v. Cowart**, Fla. 1959, 116 So.2d 432; and in **City of Miami v. Pedro Benitez**, Fla. App. 1959, 116 So.2d 463.

The Dade County Home Rule Amendment to the Florida Constitution (Section 11 of Article VIII) authorized the home rule charter of government for Dade County to grant full power and authority to the Board of County Commissioners, as the legislative and governing body of the county, to pass ordinances relating to the affairs, property and government of Dade County, and to do everything necessary to carry on a central metropolitan government in Dade County. This grant of power

contained in the constitutional amendment was sufficient to constitute express authorization to the County Commission to enact the Traffic Ordinance of Dade County (according to the Supreme Court). Specifically, the Supreme Court said in the Miami Shores suit:

> "The Home Rule Amendment . . . authorized the Charter to 'grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and to do everything necessary to carry on a central metropolitan government in Dade County.' This means that the Charter could authorize the Board to regulate on a county-wide basis according to a uniform plan those municipal services or functions that are susceptible to, and could be most effectively carried on under, a regulatory plan applicable to the entire metropolitan area — or it means nothing insofar as the authority to 'carry on a metropolitan government in Dade County' is concerned."
>
> " . . . The particular regulation here brought into question — an ordinance establishing uniformity of traffic control and enforcement throughout the metropolitan area — is specifically authorized by Section 1.01A(1) of the Home Rule Charter and is in accord with the intent and purpose of the constitutional authority granted by the Home Rule Amendment."

The grant of constitutional power to establish the Metropolitan Court and vest it with exclusive original

jurisdiction to try all violations of the Traffic Ordinance is specifically spelled out in Section 11 (1)(F) of Article VIII of the Florida Constitution as follows:

> " . . . such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses . . . "

Thus, it is plain that the Board of County Commissioners was by constitutional grant of power carried forward into the charter, expressly authorized to enact traffic regulations that superseded and nullified all municipal traffic ordinances and to establish the Metropolitan Court with exclusive jurisdiction to try traffic offenses. In **City of Miami v. Keton,** Fla. 1959, 115 So.2d 547, the Supreme Court, speaking through Mr. Justice Terrell, said:

> "It is our view that this question is answered contrary to the contention of appellant in Miami Shores Village v. Cowart, Fla. 1958, 108 So. 2d 468. It further appears from all that has been said that the ordinances in question were within the power of the Board of County Commissioners to enact, that as to traffic regulations said ordinances superseded all municipal charters and ordinances in conflict therewith and divested municipal courts in Dade County of all jurisdiction to entertain, adjudicate or punish those charged with traffic violations as of March 1, 1958."

When the electors of Dade County adopted the Home Rule Charter on May 21, 1957, the authority of the Legislature in the affairs of local government of Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise any legislative power in respect to the affairs of local government in Dade County only through passage of general acts applicable to Dade County and any one or more counties or by general acts applicable to a municipality in Dade County and any other one or more municipalities in the State. **Chase v. Cowart**, Fla. 1958, 102 So. 2d 147.

The defendant municipalities assert that by enacting ordinances after the institution of this suit adopting by reference the "Florida Model Traffic Ordinance" set forth in Chapter 186, Florida Statutes, such municipal traffic ordinances superseded and nullified the Traffic Ordinance of Dade County, because Chapter 186 is a general law and that general laws are supreme and supersede any county ordinances in conflict with the provisions of any general laws. This contention overlooks the fact that Chapter 186, Florida Statutes, is merely an enabling act providing that a "municipality may be ordinance adopt, by reference, any or all of the provisions of the Florida Model Traffic Ordinance without setting forth such provisions in full". This act has no effect whatsoever until and unless a municipality takes affirmative action to adopt such model traffic ordinance. The power of any municipality in Dade County to utilize this traffic ordinance is limited by the provisions of the Home Rule Charter prohibiting them from passing ordinances in conflict with the Charter or any county ordinances enacted thereunder.

More significant, however, this contention overlooks the fact that the constitutional prohibition against the enactment of county ordinances which conflict with the provisions of general laws is subject to an exception. The Home Rule Charter and ordinances enacted under and pursuant to the Charter may conflict with, nullify or supersede constitutional provisions and general laws **where expressly authorized** by Section 11 of Article VIII of the Florida Constitution.

In **Dade County v. Young Democratic Club of Dade County**, Fla. 1958, 104 So.2d 636, the Supreme Court sustained and upheld the validity of charter provisions relating to the method of electing county commissioners in Dade County, which provisions are in direct conflict with constitutional provisions and general laws. The Court said:

> "It follows that in the exercise of legislative power granted by the Charter, the electors of Dade County were prohibited from infringing on the supremacy of the Florida Constitution and the general laws of Florida **'except as expressly authorized'** by specific grants of power given them by Section 11, Article VIII of the Constitution, relating to home rule in local affairs for Dade County. The 'specific grants' involved here are contained in paragraphs (1) and (a) above.
>
> * * *
>
> In Chase v. Cowart we emphasized that subsection (5) of Section 11, Article VIII of the Constitution provides that the Charter 'shall not con-

> flict with any provision of this Constitution nor of (with) any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida **Except as expressly authorized in this section** * * *.' In so holding we said that the preceding "Underscored words related to those powers which were specifically granted to the electors of Dade County by the various subsections of subsection (1), Section 11, Article VIII of the Constitution."

The Court has held and determined that Section 11 (1) (b) of Article VIII of the Constitution granting full power and authority to the Board of County Commissioners to pass ordinances relating to the affairs, property and government of Dade County, and do everything necessary to carry on a central metropolitan government in Dade County, constitutes a grant of power expressly authorizing the enactment of the Traffic Ordinance of Dade County, Florida. **Miami Shores Village v. Cowart, supra.** And the Court has held that the Traffic Ordinance supersedes and nullifies all municipal traffic ordinances. **City of Miami v. Keton,** supra.

The traffic Ordinance of Dade County provides that:

> "It shall be the duty of all Municipal Police Officers to enforce all provisions of this Ordinance and of the State Vehicle laws applicable to street and highway traffic within the municipalities wherein they are employed. Arrests shall be made for violators thereof, and such Municipal Police Officers shall prosecute the same only in the Metropolitan Court."

Thus, the enforcement of uniform traffic regulations within municipal boundaries has been determined and declared to constitute a purely local function. This is a valid exercise of legislative powers within the meaning and intent of the Miami Shores Village decision, and constitutes a direct regulatory plan applicable uniformly to all municipalities in Dade County. The Metropolitan Court Ordinance provides that all fines and forfeitures collected from traffic violations committed within municipalities shall be paid to the municipalities, less their proportionate shares of the expense entailed for operation of the Metropolitan Court. The amount of fine and forfeiture funds received by municipalities, therefore, is dependent upon the degree of effectiveness of enforcement of the uniform traffic regulations. Lax and inefficient enforcement of the traffic regulations will necessarily decrease the amount of fines and forfeitures. Moreover, it will not achieve any reduction in traffic fatalities.

Other contentions made on behalf of the defendant municipalities have been carefully considered and found to be without merit.

The Court finds that the equities of this cause are with the plaintiff, Dade County, Florida, and that the plaintiff is entitled to the relief prayed for in its verified complaint.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Dade County Ordinance No. 57-12, adopting a master plan for the control of traffic, establishing regulations and setting penalties for violations thereof,

known as "The Traffic Ordinance of Dade County, Florida", sometimes referred to as the "Metropolitan Traffic Code", was lawfully enacted under and pursuant to, and in accordance with, the Home Rule Charter of government for Dade County, and is applicable in all the unincorporated and incorporated areas of Dade County and supersedes and nullifies all municipal traffic ordinances, resolutions, and codes of the several municipalities in Dade County.

2. That Dade County Ordinance, Ordinance No. 57-13, establishing the Metropolitan Court of Dade County and vesting it with exclusive original jurisdiction to try all cases for violations of the Traffic Ordinance of Dade County, also known as the Metropolitan Traffic Code (Ordinance No. 57-12), was lawfully enacted under and pursuant to, and in accordance with, the Home Rule Charter and supersedes and nullifies all municipal charters and ordinances in conflict therewith.

3. That all the traffic ordinances and traffic regulations of the defendants, City of Miami Beach and Village of El Portal, have been lawfully superseded and nullified by the Traffic Ordinance of Dade County, Florida, and all such municipal traffic ordinances are invalid and of no lawful force and effect.

4. That Ordinance No. 1353 of the City of Miami Beach, known as the Traffic Ordinance of Miami Beach, Florida, adopted on July 15, 1959, be and it is hereby declared invalid, null and void, and of no force and effect.

5. That Ordinance No. 97 of the Village of El Portal, known as the Traffic Ordinance of the Village of El Por-

tal, Florida, adopted on August 3, 1959, be and it is hereby declared invalid, null and void, and of no force and effect.

6. That the defendants, City of Miami Beach and Village of El Portal, and their respective officials, officers, representatives, appointees, agents, servants and employees, are hereby enjoined and restrained from further enforcing any municipal traffic ordinances or regulations, and the police officers of such municipalities are hereby enjoined and restrained from making any further arrests for alleged violations of such municipal traffic ordinances and from prosecuting any further violations of such municipal traffic ordinances in the municipal courts; and the municipal courts of the said defendant municipalities and the several judges thereof are enjoined and restrained from trying any further traffic cases involving violations of the traffic ordinance of such municipalities.

7. That the defendants, City of Miami Beach and Village of El Portal, and their respective officials, officers, representatives, appointees, agents, servants, employees and police officers, are hereby required to enforce the provisions of the Traffic Ordinance of Dade County, Florida, within the boundaries of their respective municipalities, and to recognize, conform to, observe and abide by the Traffic Ordinance of Dade County, Florida.

8. The City Council of the City of Miami Beach, the City Manager and the Chief of Police, and the Village Council of the Village of El Portal, the Village Manager and the Chief of Police are hereby ordered and required to take such action as may be necessary to effectuate and carry into effect the provisions and requirements of this

Final Decree, and the Traffic Ordinance of Dade County, Florida, and the Metropolitan Court Ordinance.

9. That this cause be and it is hereby dismissed as to the City of Coral Gables, Florida, and the Town of Miami Springs, Florida, and said municipalities are hereby stricken and removed from the title of this cause and all pleadings herein.

10. Subject to approval and concurrence by the District Court of Appeal, Third District (wherein jurisdiction of this cause is vested on interlocutory appeal), the Preliminary Injunctive Order entered herein on July 21, 1959, and recorded in Chancery Order Book 1402, at Page 659, is vacated and superseded by this Final Decree.

11. The Clerk of this Court is hereby directed to transmit a duly certified copy of this Final Decree to the Clerk of the District Court of Appeal, Third District, for information, consideration and appropriate action, in accordance with the order of such District Court of Appeal entered on October 16, 1959.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 27th day of June, 1960.

/s/ PAT CANNON
CIRCUIT JUDGE

ASSIGNMENTS OF ERROR

Filed August 4, 1960

[CAPTION OMITTED]

Come now the defendants-appellants, CITY OF MIAMI BEACH and VILLAGE OF EL PORTAL, and assign the following as error committed by the Circuit Court:

1. The Circuit Court erred in finding and decreeing that appellee's ordinances No. 57-12 and No. 57-13, which purport to vest exclusive jurisdiction in the Metropolitan Court of Dade County over the trial of traffic offenses committed in the appellant municipalities, are not in conflict with Article VIII, Section 11 (1) (f) of the Florida Constitution.

2. The Circuit Court erred in finding and decreeing that Chapter 186, Florida Statutes, 1959, is not such a general law within the language, intent and meaning of Article VIII, Section 11 (5) of the Florida Constitution, which may not be superseded, nullified or abrogated by appellee's ordinances.

3. The Circuit Court erred in finding and decreeing that by virtue of the provisions of Article VIII, Section 11 (5), Chapter 186, Florida Statutes, 1959, is nullified and superseded by appellee's Ordinances No. 57-12 and No. 57-13.

4. The Circuit Court erred in finding and decreeing that the provisions of Article VIII, Section 11 of the

Florida Constitution require the appellant municipalities to abide by, and to enforce the provisions of appellee's ordinances No. 57-12 and No. 57-13.

5. The Circuit Court erred in failing and refusing to find and decree that compliance by the appellant municipalities with the provisions of appellee's Ordinances No. 57-12 and No. 57-13 would be violative of the provisions of Article IX, Sections 5 and 10 of the Florida Constitution.

6. The Circuit Court erred in failing and refusing to find and decree that those provisions of appellee's ordinances which require the appellant municipalities to enforce the provisions thereof are not authorized by Article VIII, Section 11, of the Florida Constitution, and that such compliance would be violative of Article IX, Sections 5 and 10, of the Florida Constitution.

7. The Circuit Court erred in failing and refusing to find and decree that Article VIII, Section 11 (1) (f) of the Florida Constitution specifically preserves the jurisdiction of appellants' municipal courts from impairment, infringement, or abolishment, in whole or in part, by the Home Rule Charter of Dade County, or by any ordinances adopted under the purported authority thereof, and that those portions of appellee's Ordinances No. 57-12 and No. 57-13 which purport to vest "exclusive" jurisdiction in the "Metropolitan Court" of Dade County are clearly and manifestly violative of said provision of the Florida Constitution, and the Dade County Home Rule Charter.

8. The Circuit Court erred in failing and refusing to find and decree that under the provisions of Article

VIII, Section 11, of the Florida Constitution, and the Dade County Home Rule Charter, the appellee has no power or authority to adopt ordinances which purport to repeal provisions of appellants' legislative charters or appellants' ordinances not in conflict with appellee's ordinances.

9. The Circuit Court erred in finding and decreeing that appellants' legislative charters and appellants' ordinances, are repealed by appellee's ordinances No. 57-12 and No. 57-13, when it is uncontradicted that appellants' said charters and ordinances are not in conflict therewith.

10. The Circuit Court erred in failing and refusing to enter its final decree dismissing appellants' Bill of Complaint with prejudice.

11. The Circuit Court erred in making and entering its final decree herein, the same being dated June 27, 1960, and recorded on June 28, 1960, in Chancery Order Book 1457 at page 632.

[SIGNATURE AND CERTIFICATE OF SERVICE OMITTED]

IN THE SUPREME COURT OF FLORIDA

MOTION TO QUASH APPEAL

Filed December 30, 1960

[CAPTION OMITTED]

The appellee, pursuant to Rule 3.9, Florida Appellate Rules, respectfully moves the Court to quash the appeal taken by the appellants from the Final Decree entered by the Circuit Court of Dade County on June 27, 1960, and recorded June 28, 1960, in Chancery Order Book 1457, at Page 632, upon the grounds that such appeal is frivolous and taken only for the purpose of delay, and that it is clearly manifest from the record in this cause that the questions raised on appeal, namely, the constitutionality of the Traffic Ordinance of Dade County (Ordinance No. 57-12) and the Metropolitan Court Ordinance (Ordinance No. 57-13) are wholly without merit and have been determined adversely to appellants' contentions by the Supreme Court in **Miami Shores Village v. Cowart,** Fla. 1958, 108 So. 2d 468, and the controlling principles of law established in the Miami Shores suit have been cited with approval and followed in **City of Miami v. Keton,** Fla. 1959, 115 So. 2d 547; **City of Miami Beach v. Cowart,** Fla. 1959, 116 So. 2d 432; and **City of Miami v. Pedro Benitez,** Fla. App. 1959, 116 So. 2d 463 (See 14 University of Miami Law Review 518). A copy of the Final Decree and the Assignments of Error filed by appellants are attached as an appendix hereto. The Final Decree succinctly sets forth the statement of the case, the points involved and the applicable authorities. Therefore, appellee deems no supporting brief is necessary.

WHEREFORE, the appellee respectfully moves the Court for entry of an appropriate order quashing this appeal.

[SIGNATURE AND CERTIFICATE OF SERVICE OMITTED]

(Final Decree and Assignments of Error referred to in above Motion as being attached thereto, are set forth herein on pages 24 to 39, inclusive.)

ORDER OF DISMISSAL

Filed January 23, 1961

[CAPTION OMITTED]

The appellee has filed a motion to quash the appeal in the above cause, and upon consideration thereof, it is ordered that said motion be and the same is hereby granted, and the appeal entered in this cause on July 25, 1960, and recorded in Chancery Order Book 1457, at Page 632, in the Circuit Court in and for Dade County in Chancery No. 59C 6606, be and the same is hereby dismissed.

PETITION FOR REHEARING

Filed February 23, 1961

[CAPTION OMITTED]

Appellants, CITY OF MIAMI BEACH and VILLAGE OF EL PORTAL, respectfully petition the Court to rehear, reconsider and thereafter vacate its order herein granting the motion of the appellee, DADE COUNTY, to dismiss this appeal.

Appellants recognize the narrow permissible limits of such Petition. The burden is particularly heavy when such Petition must be addressed to an Order of this nature. Therefore, they urge the Court, as it considers this Petition, to view the same in the light of the self-evident fact that this case involves questions of enormous public importance and interest; that the appellants have not had the opportunity to present their contentions in the Lower Court (the transcript of the proceedings at the final hearing demonstrates that the same consisted only of a challenging insistence by the learned Circuit Judge that counsel for the appellants take issue with the Court on the non-existing issue of the correctness of his decree in the case of **Miami Shores Village v. Cowart,** Fla. 1958, 108 So. 2d 468; and that oral argument, guided and directed by the probing of the Court may well be an essential element of due process, particularly, in cases involving constitutional matters.

Appellants entreat the Court now, in the light of the foregoing, to weigh the possibility that in entering its Order of Dismissal herein, it overlooked or failed to consider:

1. That this case is not ruled or governed by the cases cited by the appellee in its Motion to Dismiss:

Miami Shores Village v. Cowart, Fla. 1958, 198 So. 2d 468; **City of Miami v. Keton,** Fla. 1959, 115 So. 2d 547; **City of Miami Beach v. Cowart,** Fla. 1959, 116 So. 2d 432; and **City of Miami v. Pedro Benitez,** Fla. App. 1959, 116 So. 2d 463; because this case raises constitutional issues not presented or determined by the opinions rendered in those cases.

2. That the so-called Dade County Home Rule Amendment to the Constitution (Article VIII, Section 11(f)) deprives only constitutional courts or courts created by General Law of original jurisdiction to try offenses against Dade County ordinances. Appellants' courts are neither constitutional courts nor courts created by General Law. The decree appealed from omits that portion of said section which permits the conferring of appellate jurisdiction on constitutional courts or courts created by General Law. If the portion of this section quoted in the final decree were intended to apply to municipal courts (which clearly is not the case) then appellate jurisdiction could have been conferred upon municipal courts, obviously an absurd interpretation.

3. That as late as December 19, 1960, this Court, in **Barrow v. Holland,** 125 So. 2d 749, re-enunciated the proposition "that all of the provisions of the Constitution bearing upon a particular subject must be construed in pari materia. No one provision is to be isolated from the others to be considered alone." The commandment of the Metro Traffic Ordinance (No. 57-12) that municipal police officers are required to enforce the same and to

prosecute offender only in the Metropolitan Court requires the raising an expenditure of municipal taxes for county purposes, which is prohibited by Article VIII of the Constitution. See **Prescott v. Board of Punblic Instruction** (Fla.) 32 So. 2d 731, 733.

4. That the so-called Dade County Home Rule Amendment to the Constitution does not authorize Dade County to enact ordinances and then to require municipalities to enforce their ordinances. Therefore the provision in the Metro Traffic Ordinance (No. 57-12) requiring municipal officers to enforce the same is void and unconstitutional.

5. That the General Law authorizing and empowering municipalities to adopt traffic code (Chapter 186, Florida Statutes 1957) is a General Law within the express intentment of the Dade County Home Rule Amendment. See 82 C.J.S. Paragraph 164, Page 278, Title, "Statutes". If it be continued to be held that so long as any Dade County Ordinance pertains to "the affairs, property and government of Dade County" then such ordinances may repeal or supersede General Law, it will then be impossible for the Legislature to enact any general law which would include in its applicability municipalities in Dade County, which is contrary to the language of Section 11 (9) of said amendment, which mandatorily requires the primacy of General Laws and requires that "this Section shall be strictly construed to maintain such supremacy of this constitution and of the Legislature in the enactment of General Laws pursuant to this Constitution."

6. That this appeal, in addition to raising conflicts between the ordinances in question and the Dade County

Home Rule Amendment to the Constitution also raises issues that said ordinances are in conflict with the provisions of the Dade County Home Rule Charter cited in appellants' brief, and that in the event that this Court, by adhering to its Order of Dismissal herein pretermits any further discussion of constitutional questions arising out of the Home Rule Charter, then in such event this Court should remand this cause to the District Court of Appeal for the determination of those phases of this appeal which pertain to conflicts between the Dade County Home Rule Charter and the ordinances herein involved. Illustrative of these contentions are:

(a) That Dade County Ordinances which are not in conflict, but are consistent with municipal ordinances, do not repeal such municipal ordinances. There is no conflict between the Dade County Traffic Ordinance and appellants' Traffic Code.

(b) That by the Dade County Home Rule Charter Dade County has no authority over municipal police officers except by the affirmative vote of a municipality or its governing body.

(c) That by the Dade County Home Rule Charter a municipality may impose higher standards of service of functions than those created by Dade County Ordinances. It is appellants' contention that their services and functions are superior to those of Dade County.

Appellants therefore respectfully urge the Court to:

1. Enter its Order reinstating this appeal, or

2. Enter its Order authorizing the filing of new briefs so as to thoroughly and accurately delineate the issues involved and permitting oral argument, or

3. Remand this cause to the District Court of Appeal for determination of the issues raising conflicts between the Dade County Home Rule Charter and the ordinances involved herein.

Appellants earnestly urge the adoption by this Court of the first or second of appellants' prayers and show unto the Court that there is being filed simultaneously with this Petition for Rehearing a Petition by the appellant municipalities to be permitted to intervene in this cause in behalf of, and as a representative of its inhabitants and citizens to protect all established common rights granted them under the provisions of the United States Constitution.

[SIGNATURE AND CERTIFICATE OF SERVICE OMITTED]

ORDER OF DENIAL

Filed March 27, 1961

[CAPTION OMITTED]

On consideration of the Petition for Rehearing filed by Attorney for Appellants,

IT IS ORDERED by the Court that the said petition be, and the same is hereby, denied

[SIGNATURE AND CERTIFICATE OF SERVICE OMITTED]

PETITION FOR LEAVE TO INTERVENE

Filed February 23, 1961

[CAPTION OMITTED]

Come now the CITY OF MIAMI BEACH and VILLAGE OF EL PORTAL, municipal corporations of the State of Florida, and respectfully pray the Court for leave to intervene herein on behalf of, and as representatives of, their respective inhabitants, citizens, and taxpayers, and for grounds show as follows:

1. That said inhabitants, citizens and taxpayers are injured by the provisions of the Charter and orinances involved herein; that such injury is to interest and rights granted to them by the provisions of the Constitution of the State of Florida and by Articles IX and XIV of the United States Constitution; that such injury is common to all, but that by virtue of the settled jurisprudence of this State, said inhabitants, citizens and taxpayers are unable to sue on their own behalf because of inability to allege or prove such injury; that unless petitioners as said representatives are permitted to intervene herein on behalf of said inhabitants, citizens and taxpayers, they will be wholly without remedy.

Petitioners pray that they be permitted to file briefs herein in support hereof within such time as the Court may deem reasonable.

[SIGNATURE AND CERTIFICATE OF SERVICE OMITTED]

ORDER OF DENIAL

Filed March 30, 1961

[CAPTION OMITTED]

The appellants in the above cause have filed a petition for leave to intervene in said cause on behalf of, and as representatives of, their respective inhabitants, citizens, and taxpayers, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

[SIGNATURE OMITTED]

PETITION FOR STAY OF PROCEEDINGS

Filed April 3, 1961

[CAPTION OMITTED]

The appellants, now petitioners, the CITY OF MIAMI BEACH and the VILLAGE OF EL PORTAL, Municipal corporations, respectfully show unto the Court as follows:

1. That on January 23, 1961, this Honorable Court entered its Order dismissing the appeal in the above styled cause.

2. That on March 27, 1961 this Honorable Court entered its Order denying appellants' Petition for Rehearing.

3. On March 30, 1961, this Honorable Court denied Petitioners' Petition for Leave to Intervene for and on behalf, and as representatives of their respective residents, citizens and taxpayers.

4. That upon the entry of said Order denying Petition for Rehearing, the Clerk of this Honorable Court, pursuant to applicable Appellate Court Rules, transmitted said Order to the Clerk of the Circuit Court for Dade County.

5. Petitioners respectfully pray this Honorable Court for its Order directing the return to this Court said Order of Dismissal and for the entry of an Order by this Honorable Court staying further proceedings in said Circuit Court, for the reasons herinafter set forth.

6. That the Decree of said Circuit Court and the subject matter of the appeal involved herein requires the police officers of your petitioning municipalities to immediately and forthwith enforce the provisions of the Metropolitan Dade County Traffic Code; divests the Municipal Courts of the petitioning municipalities forthwith of further jurisdiction over persons charged with traffic offenses; and vest sole jurisdiction thereof in the Metropolitan Court of Dade County.

7. That the Decree of said Circuit Court, and the Orders of this Honorable Court dismissing appeals therefrom and denying leave to petitioners to intervene as representatives of their respective citizens, residents and taxpayers, deprives said citizens, residents and taxpayers of rights protected and guaranteed them by the Four-

teenth Amendment of the Constitution of the United States.

8. That your Petitioners, for themselves, and for and on behalf of their respective residents, citizens and taxpayers, are desirous of perfecting and filing a Petition for Writ of Certiorari to the Supreme Court of the United States to review said Decree and said Orders entered by this Honorable Court, and your Petitioners show unto the Court that if, during the perfecting and pendency of such Petition for Writ of Certiorari, the lower Court should enforce its Decree, your Petitioners, their residents, taxpayers and citizens will suffer incalculable and irreparable harm and injury. Per contra, by the entry by this Honorable Court of the Stay Order hereby prayed for, no harm or injury will result to appellee.

9. Your Petitioners show unto the Court that they will submit their Petition for Writ of Certiorari to the United States Supreme Court within the time required by applicable statutes and rules.

WHEREFORE, your Petitioners, the CITY OF MIAMI BEACH and the VILLAGE OF EL PORTAL, pray this Honorable Court to enter its Order recalling from said Circuit Court the Order of this Honorable Court dismissing Petitioners' Appeal dated January 23, 1961, and its Order staying all further proceedings in this cause in the lower Court until such time as the Supreme Court of the United States passes upon and determines the Petition for Writ of Certiorari to be filed in the Supreme Court of the United States by your Petitioners, on the condition, however, that such Petition for Writ of Certiorari be filed in the United States Supreme Court within the time per-

mitted by applicable Statute and Rule, not exceeding ninety (90) days.

And your petitioners will ever pray.

[SIGNATURE AND CERTIFICATE OF SERVICE OMITTED]

ORDER

Filed April 4, 1961

[CAPTION OMITTED]

The appellants in the above cause have filed a petition for stay of proceedings in said cause, and for an order recalling from the Circuit Court in and for Dade County the order of the Supreme Court of Florida dismissing appellants' appeal dated January 23, 1961, and for an order staying all further proceedings in this cause in said Circuit Court until such time as the Supreme Court of the United States passes upon and determines the Petition for Writ of Certiorari to be filed in the Supreme Court of the United States by appellants, and upon consideration thereof, it is ordered that said petion be and the same is hereby granted on condition, however, that such Petition for Writ of Certiorari be filed in the Supreme Court of the United States within the time permitted by applicable statute and rules, not exceeding ninety (90) days from the date of the order sought to be reviewed.

IN THE SUPREME COURT OF FLORIDA

I, GUYTE P. McCORD, Clerk of the Supreme Court of Florida, do hereby certify that the attached and foregoing pages numbered from 1 to 54, both numbers inclusive, constitute a true and correct copy of such part of the transcript of record of the Circuit Court in and for Dade County, Florida (Chancery No. 59C 6606), and of proceedings in the Supreme Court of Florida in that certain cause lately pending in said Supreme Court wherein City of Miami Beach and Village of El Portal, Florida municipal corporations, were Petitioners and Dade County, a political subdivision of the State of Florida, was Respondent, and contain a true and correct recital and copy of all such papers and proceedings in said cause which have been directed to be included in said record by direction of the parties; all as the same appears among the records and files of my said office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of the Supreme Court of Florida, at Tallahassee, the Capital, on this the 15th day of June, 1961.

GUYTE P. McCORD
Clerk of the Supreme Court of Florida.

(Seal of the Supreme Court of Florida)

Pertinent Provisions of "Home Rule for Dade County" Amendment to Constitution of State of Florida (Vol. 3, Florida Statutes, 1959, pages 3400 - 3401, being Section II, Article VIII of Florida Constitution):

"Section 11. Dade County, home rule charter.—

(1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter . . . . "

"(b) May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes, and to do everything necessary to carry on a central metropolitan government in Dade County . . . . . "

"(d) May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental unit in Dade County may be transferred to the Board of County Commissioners of Dade County . . . . . "

"(f) May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution

or by the Legislature, except the Superintendent of Public Instruction, and may provide for the consolidation and transfer of the functions of such offices, provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerks thereof although such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses, although the charter may confer appellate jurisdiction on such courts, and provided further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law . . . . "

"(5) Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and

any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any pro ision of any ordinance enacted pursuant to said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith . . . . . "

(9) It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution."

ARTICLE IX, Section 5. Florida Constitution: "The Legislature shall authorize the several counties and incorporated cities or towns in the the State to assess and impose taxes for county and municipal purposes, and all property shall be taxed upon the principles established for State taxation . . . "

Section 14, Charter of the City of Miami Beach:

Chapter 7672 Laws of Florida, Acts of 1917, as amended by Chapter 16566, Laws of Florida Acts of 1933: "It shall be the duty of the municipal judge to hold daily terms of court in the city courtroom or such place as may be designated by the city council for the trial of all persons charged with violation of any of the ordinances of the city, which trial shall be without jury, and upon conviction of such person or persons, to impose upon him or them, such penalty as may be provided by such ordinances; and a sworn or verified complaint shall not be necessary to give the municipal court jurisdiction of offenses triable in that court but the accused may be tried of the offense as docketed, provided such docket entry is sufficient to put the accused upon notice of the offense of which he is charged. He shall have also power to summons witnesses, issue warrants for arrest upon affidavit duly filed to administer oaths and do all other acts necessary for the performance of his duties. He shall have power to punish for contempt of court by a fine not exceeding $50.00 or imprisonment not exceeding thirty (30) days, or both. The costs of prosecution in said court shall be the same as are allowed by law in criminal courts of record being taxed against persons convicted, and collected by the city clerk, to be paid over by him to the city depository and placed to the credit of the police fund.

The city manager shall have the power to appoint

by and with the consent of the city council, an associate municipal judge, who shall have all the powers and perform all the duties of the municipal judge in case of sickness, absence or disqualification of the municipal judge. The city clerk or duly authorized deputy shall act as clerk of the municipal court."

Section 4, of Charter of Village of El Portal: Chapter 19,799, Laws of Florida, 1939: "The Town Judge shall try and determine all charges or violations of municipal ordinances, ruling or regulations and shall have power to impose lawful penalties therefor and to issue all process for enforcement thereof, and by warrent to cause the arrest of accused persons not found in the municipality, which warrant may be served outside the municipality by the Chief of Police of said municipality or by the Sheriff or Deputy Sheriff. The fees and costs of the town court may be provided by ordinance and shall be paid into the Town Treasury upon collection and no costs shall be taxed upor the municipality."

Preamble to Dade County Home Rule Charter: "We, the people of this County, in order to secure for ourselves the benefits and responsibilities of home rule, to create a metropolitan government to serve our present and future needs, and to endow our municipalities with **the rights of self determination in their local affairs**, do under God adopt this home rule Charter."

Excerpts from Dade County Ordinance 57-12: "Sec. 1.35 — Police Officer — Officer of the

Public Safety Department, every officer of a municipal police department or any officer authorized to direct or regulate traffic or to make arrests."

"Sec. 2.01-1. It shall be the duty and responsibility of the Public Safety Department Officers to enforce all traffic rules and regulations of this ordinance and the State vehicle laws applicable to **street traffic within the county** and arrests for violation thereof shall be prosecuted in the Metropolitan Court."

"Sec. 20. PENALTIES. PARTIES AND PROCEDURE ON ARREST."

"Sec. 20.04. Forms and Summons of Citations, Arrest or Appearance. The County shall provide intriplicate, suitable serially numbered forms for notifying alleged violators to appear and answer to charges of violating traffic regulations. Such forms shall be issued to and receipted for by the Public Safety Director or police officer. The Metropolitan Court Clerk shall each month report to the Metropolitan Judges the disposition made by the police of all triplicate forms issued to them. For this purpose the Metropolitan Court Clerk or his prepresentative, shall have access to the necessary records of the Public Safety Department. These reports shall be public record. All police officers making an arrest for a violation of this ordinance shall use the form as provided herein and a copy of said form shall be forwarded to the Public Safety Department Records Division by the arresting officer."

"Sec. 20.05-4. Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office." .

"Sec. 20.06-1. The foregoing provisions of this ordinance shall govern all police officers in making arrests without a warrant for offense committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive or any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade."

"All county and municipal ordinances, county and municipal resolutions, municipal charters, special laws applying to this county and general laws applying only to this county or any general law which this commission is specifically authorized by the Constitution to supersede, nullify or amend, or any part of any such ordinance, resolution, charter or law in conflict with any provision contained herein is hereby repealed."

Excerpts from Dade County Ordinance 57-13: **"Sec. 3.02 Jurisdiction.** The court shall have exclusive original jurisdiction to try all cases arising under ordinances adopted by the commission. No person shall be punished by a fine exceeding one thousand dollars or imprisonment in the county jail for more than one year or by both such fine and imprisonment. The court may punish contempt by fine or by imprisonment in the county jail for not more than 48 hours,

may issue search warrants and fix the amount of bail and appeal bonds. When the complaint is made in the name of the county, a formal complaint shall not be necessary to give the court jurisdiction of offenses triable in the court, but the accused may be tried for the offense for when he is docketed, if the docket entry is sufficient to put the accused on notice of the defense with which he charged. Each judge, sitting alone, may exercise all the power and jurisdiction of the court, except that the judges shall adopt uniform rules of procedure by a majority vote."

"Sec. 3.04 Fines. All fines, forfeitures and costs received from violations occurring within the boundaries of any municipality, shall be held in a separate account by the finance director who shall pay monthly to each municipality a sum equal to two-thirds of the monies received from violations occurring within that municipality. After the close of each fiscal year, the finance director shall remit to each municipality the balance of the monies received from violations occurring within that municipality, less the proportionate expense of operating the court, including all salaries and other expenses incurred in the operation of the court and less the proportionate expense of apprehending such violators, including all salaries and other expenses incurred in the patrolling of arterial highways within municipal boundaries. Provided, however, no municipality shall receive any monies under the provisions of this section unless it permits

such use by the metropolitan court of its court room facilities and jails as is requested by the senior judge of the metropolitan court."

"**Sec. 3.26. Repeal.** All county and municipal ordinance county and municipal resolutions, municipal charters, special laws applying to this county and general laws applying only to this county or any general law which this commission is specifically authorized by the Constitution to supersede, nullify or amend, or any part of any such ordinance, resolution, charter or law in conflict with any provision contained herein is hereby repealed."

IN THE

Supreme Court of the United States

October Term, 1961

No. 171

CITY OF MIAMI BEACH and
VILLAGE OF EL PORTAL,
Municipal Corporations of the State of Florida,

Petitioners,

vs.

COUNTY OF DADE, a Political Subdivision of the State of Florida,

Respondent.

PETITION FOR REHEARING ON ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Miami Beach, Florida
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Of Counsel:
JOSEPH A. WANICK
1130 Washington Avenue
Miami Beach, Florida

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Your petitioners, the City of Miami Beach, and the Village of El Portal, municipal corporations of the State of Florida, for themselves, and in their representative capacity, for and on behalf of their respective inhabitants, citizens, and taxpayers, deem themselves injured and aggrieved by the Order of this Honorable Court entered on October 9, 1961, which denied their Petition for Writ of Certiorari, to the Florida Supreme Court, and therefore they respectfully pray for a Rehearing thereof.

POINT INVOLVED ON REHEARING

This litigation was begun by the respondent, County of Dade, a political subdivision of the State of Florida, against the City of Miami Beach and the Village of El Portal, both being Florida municipal corporations. The real parties in interest are the inhabitants, citizens and taxpayers of the respective municipalities. They were not named as defendants. To protect rights and interests claimed under Articles IX and XIV of the Federal Constitution they attempted, by and through their representatives, the petitioning municipalities, to intervene in the proceedings then pending in the Florida Supreme Court. That Court denied them leave to intervene. That refusal to consider rights asserted under the Federal Constitution constituted a denial of an opportunity to be heard, and such denial is in and by itself a violation of the Due Process Clause of the Fourteenth Amendment of the Federal Constitution, because nowhere in the judicial process was that right accorded.

ARGUMENT

The petitioning inhabitants, citizens and taxpayers of the respective municipalities are the real parties in interest. As such, they have, and must be accorded an opportunity to be heard. As stated in **Muncie Natural Gas Co. v. City of Muncie 160 Ind. 97, 66 N.E. 436, at 438:**

> " . . . . it may be affirmed that it is not necessary to show that the City has itself sustained damage when it sues for the benefit of its inhabitants, but that it is enough to show that the act tends to injure the public of the municipality."

See, also, **City of Saginaw v. Consumers' Power Co. 213 Mich. 160, 182 N.W. 146 at 151.**

The Florida Supreme Court itself recognizes the propriety of a taxpayer asserting the unconstitutionality of legislation affecting the municipality. **See North Bay Village v. Isle of Dreams Broadcasting Corp. (1950) (Fla) 46 So(2) 196.** Hence, if the municipality is precluded therefrom, there is no remedy whatsoever if these citizens and taxpayers are also denied the opportunity to be heard.

It may have appeared to this Court, and not without justification, that the Petition for Writ of Certiorari herein was that of the petitioning municipalities alone, and that it sought to invoke the jurisdiction of this Court on the ground that the Florida Supreme Court had misconstrued applicable provisions of the State Constitution. Such was not its purpose or intent.

This Petition for Rehearing seeks not merely, however, to clarify the point, but to bring to the attention of this Honorable Court that **the ordinances involved** (Appendix, pp. 62-67) in effect and operation, **levy a tax upon the inhabitants, citizens and taxpayers of the respective municipalities.** It is here and now contended by them that under the Due Process Clause of the Fourteenth Amendment to the Federal Constitution they are entitled, somewhere and at some time in the judicial process to be heard on the constitutionality of that tax; **they were denied that right;** and that the denial of that right constitutes a violation of the Due Process Clause of that Amendment.

CONCLUSION

Petitioners respectfully urge that rehearing be granted, and that the mandate of this Court be stayed pending disposition of the petition.

Respectfully submitted,

CITY OF MIAMI BEACH and
VILLAGE OF EL PORTAL, Florida
Municipal Corporations, as
representatives of and by and for
their respective inhabitants, citizens
and taxpayers.

By _____
HARRY ZUKERNICK
Attorney for Petitioners

CERTIFICATE

I, HARRY ZUKERNICK, an attorney regularly admitted to practice in this Court, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and do hereby certify that the petition is restricted to the ground herein specified, and that, in his opinion, the same is a substantial ground available to petitioner, although not previously presented.

HARRY ZUKERNICK
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Rehearing has been served by me this date personally upon Darry A. Davis, Esq., attorney for the County of Dade, respondent herein this day of October, 1961.

JOSEPH A. WANICK
of Counsel for Petitioners

PROOF OF SERVICE

I, Darrey A. Davis, attorney for the County of Dade, respondent, hereby acknowledge receipt of a copy of the foregoing Petition for Rehearing this day of October, 1961.

(Signature)